

SOUTH DELTA WATER AGENCY

4255 PACIFIC AVENUE, SUITE 2
STOCKTON, CALIFORNIA 95207
TELEPHONE (209) 956-0150
FAX (209) 956-0154
E-MAIL Jherrlaw@aol.com

Directors:

Jerry Robinson, Chairman
Robert K. Ferguson, Vice-Chairman
Natalino Bacchetti, Secretary
Jack Alvarez
Mary Hildebrand

Engineer:

Alex Hildebrand
Counsel & Manager:
John Herrick

October 24, 2007

Mr. John Kirlin, Executive Director
c/o Delta Vision Blue Ribbon Task Force
650 Capitol Mall, 5th Floor
Sacramento, CA 95814

Re: October 16, 2007, Draft Vision

Dear Mr. Kirlin:

The following are the South Delta Water Agency's comments to the October 16, 2007 draft Delta Vision prepared by the Blue Ribbon Task Force staff.

1. The draft Vision contains a wide range of assertions and proposed goals as guiding principles for the future operation and development of the Delta and surrounding areas. However, the draft Vision continues the unfortunate "new policy" to treat the water system and ecosystem as co-equal values. This position is contrary to not only the historic operation of the Delta and existing water rights, but also to over 50 years of legislation. By adopting this new policy, the Task Force avoids the critical issue facing the Delta; how much water is available for export under any set of conditions. By discussing reliability without a determination of what amount is, can or should be reliable, the solutions to the Delta's problems are once again deferred to future generations.

2. For almost a hundred years after the Delta was reclaimed, fisheries and local and in-Delta activities thrived together. The ecosystem was not significantly impacted as the numerous fisheries were stable, if not growing. Under these conditions, the Delta remained a fresh water area, and the mixing zone was still located downstream near the Suisun marsh. Upstream development decreased outflow such that the mixing zone was moved upstream closer to the Delta under certain conditions. The construction and operation of the state and federal projects resulted in the mixing zone moving much farther upstream and being relocated to areas where it had only been under extreme drought conditions. As the Contra Costa Water Agency

submittals show, the projects have made the Delta saltier than it was in the past. The projects have substantially increased salinity in almost all falls, erased the winter and spring freshening of the system in dry years, and lessened the wet year flushing of salts from the system. Hence, contrary to the PPIC Report, the Delta has been made much more salty with the projects. [Consequently, invasive species have multiplied under the un-natural salty condition.]

In the last five years, exports have been at record levels and the results are obvious. The species whose habitat was diminished and moved by the projects have now been brought to the brink of extinction. Notwithstanding that the export of water has caused the breakdown of the Delta ecosystem, one might *still* want to protect exports in the absence of some other guiding principles. There are such other principles which have been ignored by the Task Force.

When the projects were authorized, the Legislature passed and there were enacted laws which specifically give the areas of origin and the Delta a priority of rights to the water that could be exported. These laws not only make the provision of an adequate supply (of good quality) to the Delta (including ecosystem needs) and upstream areas of origin a precondition to any exports, they anticipate that those same areas will slowly take back portions of the developed water, thus decreasing exports.

Further, the existing system of water right priorities places nearly all Delta and upstream diverters ahead of the export projects while the public trust doctrine requires that exports maintain and protect such things as the fisheries before exports can occur.

Finally, the development of water for export was anticipated to include an additional 5 million acre feet from north-western rivers; none of which will ever be made available. Hence, when the projects export 4, 5 or 6 million acre feet of water, they are taking water originally intended to remain in the system and provide for in-Delta and upstream needs.

In this situation, it is unreasonable to give export needs a co-equal priority with ecosystem needs (or local in-Delta needs wholly ignored by the Task Force's "new policy").

To further complicate the solutions to Delta problems, the draft Vision continues to call for the creation of "new" conveyance, and that the protection of a resilient Delta requires a "separation of water for human uses from water for the ecosystem." Again, the draft Vision not only ignores the functions of the Delta but the established law governing it.

In light of upstream development, there are many times when there is insufficient downstream flow to meet all needs, both human and ecosystem. In order to address this situation, the projects are required by law to meet Delta outflow needs (ecosystem) and to provide in-Delta uses. In addition, the projects are required to coordinate reservoir releases to meet these needs. This idea is known as the "common pool," meaning that the projects are

required to keep the Delta fresh, healthy and fully supplied (see Water Code Section 12200 et. seq.).

Any isolated conveyance therefore does the exact opposite; it removes the fresh water needed for the ecosystem and in-Delta uses to the detriment of both. It is hard to imagine the basis for adopting a vision which reverses all existing priorities, undoes statutory protections and worsens Delta water quality in order to insure the supply of water to certain areas. Needing more and more water (or even current levels) is not a basis to ignore the law and destroy others. If arid regions need more water, that is not a Delta problem, that is an arid region problem, and perhaps a state problem. However curing that problem should not come at the expense of the Delta. No matter how the needs are couched, it does not change the fact that the current levels of exports have ruined the Delta. Protecting exports through an isolated facility means you want to protect that which has caused the harm.

As the developing Vision examines these issues, it should not avoid addressing them directly. The draft Vision has numerous references to “conveyance” and “separation” and “isolated facilities.” If the drafters mean a peripheral canal, they should say so and explain why and how. It does not serve the public that such an important debate is only alluded to and subtly implied.

Fragility and Repair of Levees

The last paragraph on page 3 states “A multiple levee failure event in the Delta could flood dozens of islands, badly damage the ecosystem, and entirely halt water exports from the Delta for years”. We believe that this statement is extreme and needs substantial qualification.

- The statement apparently assumes that measures, including those proposed in this draft, will not be implemented. These are measures to strengthen critical levees, channel closures in critical locations to impede the flow of Bay water into the Delta during island fill up after levee failure, and preplanning for levee repairs.
- Multiple levee breaks can only occur due to extreme floods or to major seismic events. Levee breaks that occur during floods do not cause cessation of exports. The statement about halting exports therefore is only germane to seismic events that are associated with major quakes in the Bay Area.
- The in-Delta coalition’s CWMP plan also makes it possible to pump back to the Bay, via the Old River corridor, Bay water that reaches the central Delta. If these things are done, we believe a cessation of exports would be unlikely to be as long as a year. The Vision Draft should not imply that a multi-year loss of exports can not be avoided without a PC.

Mr. John Kirlin, Executive Director
October 24, 2007
Page - 4 -

The Delta's land use pattern

The draft at the bottom of page 11 and elsewhere speaks of the importance of preserving the pattern of land use, including agriculture. This at least implies that the basic pattern of channels and lands must be preserved. However, the draft elsewhere seems to suggest that this can be done even if the salinity in Delta channels is unavoidably increased by an isolated conveyance of Sacramento water for export. It also implies that Delta agriculture can survive even if substantial areas of farm lands are converted to wetlands. This would put remaining farmers out of business because the regional need for support businesses, such as food processing facilities would no longer be sufficient to keep those facilities in business. If farmers are put out of business, who will maintain non-urban levees?

Ecosystem/Habitat

The draft Vision lists numerous habitat related actions including tidal marshes, seasonal flood plains, non-tidal wetlands and dendritic channels. Whether or not or to what extent these actions are necessary should first be shown. If the fisheries were healthy before the projects, they may still be healthy if project operations are adjusted and additional habitat not needed. This may sound like heresy, but many proposals for new habitat locate it on land 5 - 20 feet above sea-level. Such proposals are obviously based on some perceived need, not any realistic analysis fishery needs or practicality of the habitat. In addition, even if the "too high" land were converted into wetlands, it would create large stagnant pools of warm water; the exact opposite of habitat.

Please call me if you have any questions or comments.

Very truly yours,

JOHN HERRICK

JH/dd